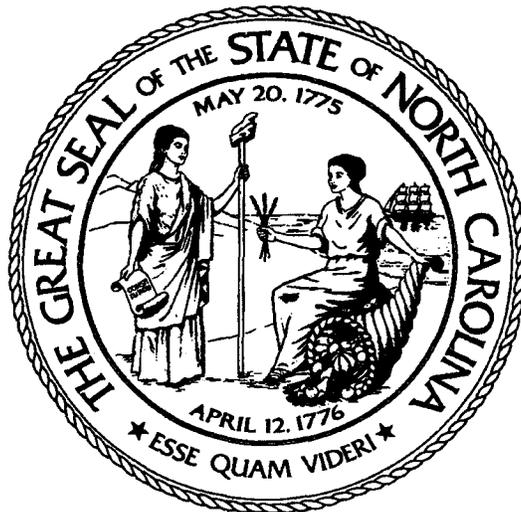


**REPORT OF THE
AGRICULTURE AND FORESTRY
AWARENESS STUDY COMMISSION**



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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North Carolina General Assembly

Legislative Services Office
Legislative Office Building
300 N. Salisbury Street, Raleigh, N. C. 27603-5925

GEORGE R. HALL, JR., Legislative Administrative Officer
(919) 733-7044

M. GLENN NEWKIRK, Director
Automated Systems Division
Suite 400, (919) 733-6834

GERRY F. COHEN, Director
Bill Drafting Division
Suite 100, (919) 733-6660

THOMAS L. COVINGTON, Director
Fiscal Research Division
Suite 619, (919) 733-4910

TERRENCE D. SULLIVAN, Director
Research Division
Suite 545, (919) 733-2578

January 24, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Agriculture and Forestry Awareness Study Commission
herewith submits to you for your consideration its report.
Respectfully submitted,



Senator Charles W. Albertson



Representative Vernon G. James

Cochair
Agriculture and Forestry Awareness
Study Commission



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INTRODUCTION

History of the Commission

The agriculture, forestry, and seafood industries have always played an essential and vital role in supporting both the rural and urban populations of North Carolina. Over the past decade, all of these industries have experienced severe financial setbacks and instability due to inclement weather, pollution problems, inflation, reduction in foreign exports, and other unavoidable circumstances. In order to insure that the agriculture, forestry, and seafood industries maintained their ability to produce for future needs, the 1983 General Assembly enacted HB 1169 (Chapter 914, 1983 Session Laws) which created the Agriculture, Forestry, and Seafood Awareness Study Commission. The Commission was successful from 1983 through 1985 in making findings and recommendations for the industries of agriculture, forestry, and seafood. Based on this success, the 1985 General Assembly permanently established the Agriculture, Forestry, and Seafood Awareness Study Commission in the law (Chapter 792, 1985 Session Laws) so it could continue to study these three industries. In 1989, the General Assembly established the permanent Joint Legislative Commission on Seafood and Aquaculture in the law (Chapter 802, 1989 Session Laws) to concentrate on the State's production, processing, and marketing of seafood. With the creation of the Commission on Seafood and Aquaculture, the Agriculture, Forestry, and Seafood Awareness Study Commission began to focus more specifically on the needs of the agriculture and forestry industries. Recognizing this change, the 1991 General Assembly, during the Regular Session 1992, passed legislation effective January 1, 1993 removing seafood from both the title and scope of study of the Commission.

Commission's Charge

G.S. 120-154 authorizes the Agriculture and Forestry Awareness Study Commission to:

- * Study the influence of agriculture and forestry on the economy of the State.
- * Develop alternatives for increasing the public awareness of these industries.
- * Study the present status of agriculture and forestry.
- * Identify problems limiting the future growth and development of these industries.
- * Develop an awareness of the importance of science and technological development to the future of these industries.
- * Formulate plans for new State initiatives and support for agriculture and forestry, and for the expansion of opportunities in these industries.

These duties form the foundation of the Agriculture and Forestry Awareness Study Commission's review of these industries and serve as a basis for its final recommendations.

Commission's Membership

The membership of the Commission includes citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. The Governor, the Lieutenant Governor, and the Speaker of the House of Representatives each appoint three members to this 17 member commission. The following individuals also serve on the Commission:

- * The Chair of the House Agriculture Committee.
- * The Chair of the Senate Committee on Agriculture, Marine Resources, and Wildlife.
- * The Commissioner of Agriculture, or his designee.
- * A member of the Board of Agriculture.
- * The President of the N. C. Farm Bureau, or his designee.
- * The Master of the State Grange, or his designee.
- * The Secretary to the Department of Environment, Health, and Natural Resources, or his designee.
- * The President of the North Carolina Forestry Association, Inc., or his designee.

The Chair of the House Agriculture Committee and the Chair of the Senate Agriculture Committee serve as the co-chairs of the Agriculture and Forestry Awareness Study Commission.

COMMISSION PROCEEDINGS

The Agriculture and Forestry Awareness Study Commission met three times from January through May of 1994 before filing an interim report with the 1994 Regular Session of the General Assembly. That report recommended three pieces of legislation, two for additional positions for the College of Agriculture and Life Sciences at North Carolina State University and one, a resolution, honoring the 50th anniversary of Smokey the Bear. All three legislative proposals received favorable consideration during the 1994 Session.

After the conclusion of the short session, the Commission resumed its work beginning with a meeting September 26 & 27, 1994 in Duplin County. The meeting began the afternoon of September 26 at James C. Sprunt Community College and focused on the progress of the Swine Odor Task Force. Representative James gave a brief history of the Swine Odor Task Force and then turned the meeting over to Dr. Jon Ort, Assistant Dean of the College of Agriculture and Life Sciences at North Carolina State University. Dr. Ort, along with Dr. Wynne and Dr. Crickenberger, reviewed the activities of the Task Force since their last progress report was issued in December 1993. They noted that animal waste management and odor is a world-wide problem. In North Carolina 620,000 sows and 10.5 million top hogs produce about 9.5 million tons of manure annually. Sources of odor on North Carolina hog farms include decaying manure in buildings, dead animals, problems with waste lagoons, overly dusty or dry buildings, and manure land application systems such as spraying or spreading. Facts and perceptions about swine odors were discussed including the complexity of odor, the sensitivity of the human nose, the impact odors on property values and the quality of life, and the fact that reduction of swine odors will require varying degrees of financial resources. Attention to detail and proper management of facilities is paramount in odor control.

Six members of the Task Force, along with Representative James, toured Holland, Denmark, and Germany in April 1994 to investigate European technologies and initiatives to manage intensive animal operations. They noted that regulation was a way of life for the European farmer, and discussed some of the more innovative regulatory concepts such as the "Green Label" incentive program in Germany.

Also discussed was the concept of animal wastes as a value-added product. While in Europe, the task force visited a poultry operation where the manure was collected, dried, pelletized, and sold. The value of the manure sold as fertilizer exceeds the value of the eggs sold.

According to Dr. Ort, the final Task Force report should be available in January 1995. The report will focus on the pros and cons of the options available for the reduction of odors and the protection of water quality around intensive hog operations.

After concluding the discussion on the swine odor study, the Commission reviewed the report from the North Carolina Center for Public Policy on pesticide regulation in North Carolina. The Commission asked the Department of Agriculture to comment on the report at its next meeting. On Wednesday, September 27, the Commission toured a number of swine operations in Duplin and Sampson counties.

The Commission's second meeting was held November 1, 1994 in Raleigh. At that meeting the Commission reviewed several issues of importance to farmers and foresters in the State. A proposal to amend the State's pesticide laws was brought before the Commission that would place responsibility on the farmer contracting with an aerial applicator to ascertain that the area designated may be sprayed. The proposal also would restrict the authority of the Pesticide Board to levy civil penalties in cases where there is vegetative damage only. Under such circumstances the penalty assessed could not exceed the value of the vegetation damaged. The proposal was taken under consideration by the Commission with a vote being postponed until the next meeting.

Dr. Fred Knott, from the North Carolina Farm Bureau Federation, gave an extensive presentation on the history, current status, and trends in the State's dairy industry. There has been a serious decline in the number of dairy farms in the past 30 years; from 3,984 farms in 1961 to 691 as of August, 1994. However, the reduction in numbers of farms, and numbers of cows, has been largely offset by increases in the productivity of milk cows. According to Dr. Knott, the changes in North Carolina have tracked closely the national trends.

Two presentations were made on the marketing of poultry residues. The first was given by Dr. Donald W. Eaddy, Director of the Agronomic Division, N.C. Department of Agriculture. Dr. Eaddy stated that the Agronomic Division encourages activities promoting non-farm uses and markets for animal wastes. Animal wastes, notably swine and poultry wastes, have agronomic value as fertilizer.

Proper use of animal wastes as fertilizer reduces fertilizer costs and converts waste into a useful product. Problems can arise, however, where the production of animal wastes exceeds the nutrient requirements of an area, as is the case in a number of North Carolina counties. The challenge is to develop industries to market these wastes and shift them to areas requiring additional nutrients. Brent Daniels, the president of one such company, Organic Litter Grow, spoke to the Commission about his company and the challenges to marketing his product. Organic Litter Grow takes raw chicken manure and places it in concrete pits where it is stirred by a computerized composting vessel over a thirty day period. The process destroys pathogens and weed seeds in the litter. The product remaining is not only a natural fertilizer, but a soil builder as well.

At the November 1 meeting there was also an extensive discussion of the landowner protection bill. This proposed legislation would limit the liability of landowners who allow persons to use their property for recreational or educational purposes without charge. Under these circumstances, the landowner would owe such persons the same duty of care owed a trespasser; that the landowner will not willfully or wantonly injure him. The Agriculture and Forestry Awareness Study Commission recommended this bill to the 1993 legislature but it failed to gain approval. Among the difficulties that have been expressed are (1) the question of liability where innocent third parties are injured and (2) the definition of "charge" for use, that would void the limitation on liability. The legislation is actively supported by the North Carolina Forestry Association, the N.C. Department of Agriculture, the N.C. Farm Bureau Federation, Inc. and the N.C. Wildlife Federation.

At the final meeting of the year, November 30, 1994, David McLeod, the Commissioner of Agriculture's designee to the Commission, presented several legislative proposals from the Department of Agriculture. The first proposal would set stricter labeling requirements for agricultural seed. Three of the bills would authorize the Department to assess civil penalties for violations of the animal health and animal welfare laws, meat inspection laws, and gasoline and oil inspection laws. The fifth proposal would require persons selling poultry at locations other than their farms to obtain licenses. Some members of the Commission expressed concern that the licensing requirement would place an undue burden on the family farmer. The Commission voted to include the proposal in its final report, however, Mr. McLeod was asked to relay the Commission's concerns to the Department.

The remainder of the program focused on whether to approve a proposal that would provide a tax credit to persons constructing composting facilities for the disposition of dead poultry. Both support for and opposition to the proposal was received from the poultry farmers. The primary source of concern voiced by those opposed to the tax credit was that it would further institutionalize the system that now places the burden of disposing of poultry mortalities on the grower of the bird instead of on the integrator, or owner of the bird.. The Commission voted to approve the tax credit, which would allow a credit of up to 50% of the cost of a facility, not to exceed \$2,000. The fiscal note for the bill indicated that this would present a loss of revenue to the State of \$700,000 per year for five years.

COMMISSION RECOMMENDATIONS

The Commission on Agriculture and Forestry Awareness recommends the following legislation to the 1995 General Assembly:

- I. AN ACT TO ENCOURAGE COMPOSTING OF POULTRY CARCASSES AND PROVIDE AN INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES.
- II. AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO MEMBERS OF THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND RECREATIONAL PURPOSES.
- III. AN ACT TO PROHIBIT FARMERS FROM CONTRACTING FOR THE AERIAL APPLICATION OF PESTICIDES IN RESTRICTED AREAS AND TO LIMIT THE AMOUNT OF THE CIVIL PENALTY TO BE LEVIED BY THE PESTICIDE BOARD IN CASES WHERE THERE IS ONLY VEGETATIVE DAMAGE IN THE NONTARGET AREA.
- IV. AN ACT TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATIONS OF THE GASOLINE AND OIL INSPECTION ACT, THE MEAT INSPECTION LAWS, AND THE ANIMAL WELFARE AND ANIMAL HEALTH LAWS.
- V. AN ACT TO AMEND THE NORTH CAROLINA SEED LAW.
- VI. AN ACT TO PROVIDE FOR LICENSING OF DEALERS IN POULTRY AND RATITES.

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

95-RFZX-001
THIS IS A DRAFT 20-JAN-95 16:53:24

Short Title: Poultry Composting Credit.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE THE COMPOSTING OF POULTRY CARCASSES
3 AND PROVIDE AN INCOME TAX CREDIT FOR POULTRY COMPOSTING
4 FACILITIES.
5 The General Assembly of North Carolina enacts:
6 Section 1. Division II of Article 4 of Chapter 105 of the General Statutes
7 is amended by adding a new section to read:
8 "**§ 105-151.23. Credit for construction of a poultry composting facility.**
9 (a) Credit. -- A taxpayer who constructs in this State a poultry composting facility
10 as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry
11 carcasses from commercial operations in which poultry is raised or produced is
12 allowed as a credit against the tax imposed by this Division an amount equal to fifty
13 percent (50%) of the installation, materials, and equipment costs of construction paid
14 during the taxable year. This credit may not exceed two thousand dollars (\$2,000)
15 for any single installation. The credit allowed by this section may not exceed the
16 amount of tax imposed by this Division for the taxable year reduced by the sum of all
17 credits allowable, except payments of tax by or on behalf of the taxpayer. The credit
18 allowed by this section does not apply to costs paid with funds provided the taxpayer
19 by a State or federal agency.

1 (b) Property Owned by the Entirety. -- In the case of property owned by the
2 entirety, if both spouses are required to file North Carolina income tax returns, the
3 credit allowed by this section may be claimed only if the spouses file a joint return.
4 If only one spouse is required to file a North Carolina income tax return, that spouse
5 may claim the credit allowed by this section on a separate return."

6 Sec. 2. Division I of Article 4 of Chapter 105 of the General Statutes is
7 amended by adding a new section to read:

8 "**§ 105-130.42. Credit for construction of poultry composting facility.**

9 A taxpayer who constructs in this State a poultry composting facility as defined in
10 G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from
11 commercial operations in which poultry is raised or produced is allowed as a credit
12 against the tax imposed by this Division an amount equal to fifty percent (50%) of
13 the installation, materials, and equipment costs of construction paid during the
14 taxable year. This credit may not exceed two thousand dollars (\$2,000) for any single
15 installation. The credit allowed by this section may not exceed the amount of tax
16 imposed by this Division for the taxable year reduced by the sum of all credits
17 allowable, except payments of tax by or on behalf of the taxpayer. The credit
18 allowed by this section does not apply to costs paid with funds provided the taxpayer
19 by a State or federal agency."

20 Sec. 3. G.S. 106-549.70 reads as rewritten:

21 "**§ 106-549.70. Disposal ~~pit or incinerator~~ pit, incinerator, or poultry composting**
22 **facility required.**

23 Every person, firm or corporation engaged in ~~growing poultry, turkeys or other~~
24 ~~domestic fowl or products thereof~~ raising or producing poultry for commercial
25 purposes shall provide and maintain a disposal ~~pit or incinerator~~ pit, incinerator, or
26 poultry composting facility of a size and design, approved by the Department of
27 Agriculture, ~~wherein in which~~ all dead ~~diseased~~ poultry carcasses are disposed, shall
28 ~~be disposed of in a manner to prevent the spread of disease; provided, that the~~
29 ~~provisions of this Article shall~~ This section does not apply to ~~growers of poultry,~~
30 ~~turkeys or other domestic fowl~~ poultry producers with flocks of 200 or less. The
31 definitions provided in Article 49D of this Chapter apply in this Article."

32 Sec. 4. G.S. 106-549.51 is amended by adding a new subdivision to read:

33 "(25a) 'Poultry composting facility' means a structure or enclosure in
34 which whole, unprocessed poultry carcasses are decomposed by
35 a natural process into an organic, biologically safe by-product
36 that can be used for plant food."

37 Sec. 5. Sections 3 and 4 of this act are effective upon ratification and the
38 remainder of this act becomes effective for taxable years beginning on or after
39 January 1, 1995.

EXPLANATION OF LEGISLATIVE PROPOSAL I

Legislative Proposal I would provide a tax credit for persons constructing a facility for the composting of poultry carcasses from commercial poultry operations. The amount of the credit would be 50% of the installation, equipment, and materials cost of building the unit, not to exceed \$2,000.

Section 1 of the bill amends G.S. 105-151.23 providing for the credit against the individual income tax.

Section 2 of the bill amends G.S. 105-130.42 allowing the credit against the corporate income tax.

Section 3 amends G.S. 106-549 to include a poultry composting facility as a permissible means of disposing of the carcasses of dead poultry. As amended, all persons engaged in raising poultry, with flocks in excess 200 birds, must maintain a disposal pit, incinerator, or a poultry composting facility for the disposal of dead birds.

Section 4 of the bill amends G.S. 106-549.51 by adding a definition of the term "poultry composting facility".

Sections 3 and 4 of the act become effective upon ratification. Sections 1 and 2 become effective for taxable years beginning on or after January 1, 1995.

LEGISLATIVE PROPOSAL II
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

S/H

D

95-RFZ-002
THIS IS A DRAFT 24-JAN-95 08:23:41

Short Title: Landowner Protection.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO LIMIT THE LIABILITY OF LANDOWNERS TO MEMBERS OF
3 THE PUBLIC ENTERING THE LAND FOR EDUCATIONAL AND
4 RECREATIONAL PURPOSES.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes are amended by adding a new Chapter to
7 read:

8 "Chapter 38A.

9 "Landowner Liability.

10 "§ 38A-1. Purpose.

11 The purpose of this Chapter is to encourage owners of land to make land and
12 water areas available to the public for educational and recreational purposes by:

13 (1) Limiting the liability of the owner to persons entering the land for
14 those purposes;

15 (2) Ensuring that through making one's land available for educational
16 and recreational purposes, an owner need not be subjected to
17 waste or a financial burden.

18 "§ 38A-2. Definitions.

19 The following definitions shall apply throughout this Chapter, unless otherwise
20 specified:

21 (1) 'Charge' means a price or fee asked for services, entertainment,
22 recreation performed, or products offered for sale on land or in

1 return for an invitation or permission to enter upon land, except as
2 otherwise excluded in this Chapter.

3 (2) 'Educational purpose' means any activity undertaken as part of a
4 formal or informal educational program, and viewing historical,
5 natural, archaeological, or scientific sites.

6 (3) 'Land' means real property, land, and water, other than any real
7 property, land, and water that are appurtenant to a private
8 residence.

9 (4) 'Owner' means any individual, legal entity, or governmental entity,
10 and any employee or agent, that has any fee or security.

11 (5) 'Recreational purpose' means any activity undertaken for
12 recreation, exercise, education, relaxation, refreshment, diversion,
13 or pleasure.

14 **"§ 38A-3. Exclusions.**

15 For purposes of this act, the term 'charge' does not include:

16 (1) Unless otherwise agreed in writing, any lease, dedication, license,
17 or easement, or the proceeds thereof, by an owner of land to a
18 nonprofit organization or governmental entity for educational or
19 recreational purposes.

20 (2) Any action taken by a person, legal entity, nonprofit organization,
21 or governmental entity other than the owner, or any monetary
22 contribution made, in either event, whether or not sanctioned or
23 solicited by the owner, the purpose of which is to (i) improve
24 access to land for educational or recreational purposes; (ii) remedy
25 damage to land caused by educational or recreational use; or (iii)
26 provide warning of hazards on, or remove hazards from, land used
27 for educational or recreational purposes.

28 (3) Unless otherwise agreed in writing or otherwise provided by the
29 State or federal tax codes, any property tax abatement or relief
30 received by the owner from the State or local taxing authority in
31 exchange for the owner's agreement to open the land for
32 educational or recreational purposes.

33 (4) Unless otherwise agreed in writing, any contribution in kind,
34 services, or cash paid to reduce or offset costs and eliminate losses
35 from educational or recreational use.

36 **"§ 38A-4. Limitation of liability.**

37 Except as specifically recognized by or provided for in this act, an owner of land
38 who either directly or indirectly invites or permits without charge any person to use
39 such land for educational or recreational purposes owes the person the same duty of
40 care that he owes a trespasser."

41 Sec. 2. This act becomes effective October 1, 1995, and applies to all
42 causes of action arising after that date. This act shall expire September 30, 2000.

EXPLANATION OF LEGISLATIVE PROPOSAL II

Legislative Proposal II would add a new Chapter 38A, Landowner Liability, to the General Statutes. The new chapter would provide that a landowner who permits a person to use his land for educational or recreational purposes without charge owes that person the same duty of care that he would owe a trespasser. The degree of care owed a trespasser is to refrain from wantonly or willfully injuring the person trespassing.

G.S. 38A-1 sets forth the purposes of the Chapter: (1) to limit the liability of a property owner to persons on his land for recreational or educational purposes and (2) to ensure that a landowner is not subjected to waste or financially burdened as a result of allowing people to enter his land for those purposes.

G.S. 38A-2 provides definitions for the new article. In particular, the term "charge" is defined to mean a price or fee asked for services, entertainment, recreation performed, or products offered for sale on the land in return for an invitation or permission to enter the land. However, G.S. 38A-3 excludes certain types of compensation or benefits to the landowner from the definition of "charge".

G.S. 38A-4 sets forth the limitation on the a landowner's liability. As was stated above, he owes the person coming on the land for educational or recreational purposes the same duty of care that is owed to a trespasser.

The act becomes effective October 1, 1995 and would apply to causes of action arising on or after that date. The act expires September 30, 2000.



LEGISLATIVE PROPOSAL III
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

S/H

D

95-RFZ-003
THIS IS A DRAFT 24-JAN-95 08:23:43

Short Title: Pesticide Law Amendments.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT FARMERS FROM CONTRACTING FOR THE AERIAL
3 APPLICATION OF PESTICIDES IN RESTRICTED AREAS AND TO LIMIT
4 THE AMOUNT OF THE CIVIL PENALTY TO BE LEVIED BY THE
5 PESTICIDE BOARD IN CASES WHERE THERE IS ONLY VEGETATIVE
6 DAMAGE IN THE NONTARGET AREA.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 143-443(b) reads as rewritten:
9 "(b) It shall be unlawful:
10 (1) For any person to detach, alter, deface, or destroy, in whole or in
11 part, any label or labeling provided for in this Part or regulations
12 promulgated hereunder, or to add any substance to, or take any
13 substance from a pesticide in a manner that may defeat the
14 purpose of this Part;
15 (2) For any person to use for his own advantage or to reveal, other
16 than to the Board or proper officials or employees of the State or
17 federal government or to the courts of this State in response to a
18 subpoena, or to physicians, or in emergencies to pharmacists and
19 other qualified persons, for use in the preparation of antidotes, any
20 information relative to formulas of products acquired by authority
21 of G.S. 143-442.
22 (2a) Repealed by Session Laws 1981, c. 592, s. 3.

- 1 (3) For any person to use any pesticide in a manner inconsistent with
2 its labeling.
- 3 (4) For any person who contracts for the aerial application of a
4 pesticide to permit the application of any pesticide that is
5 designated on its labeling as toxic to bees without first notifying,
6 based on available listings, the owner or operator of any apiary
7 registered under the North Carolina Bee and Honey Act of 1977
8 that is within a distance designated by the Pesticide Board as
9 necessary and appropriate to prevent damage or injury.
- 10 (5) For any person to distribute, sell or offer for sale any restricted use
11 pesticide to any dealer who does not hold a valid North Carolina
12 Pesticide Dealer License.
- 13 (6) For any person to contract with an aerial applicator to apply
14 pesticides within a restricted area in violation of a rule adopted by
15 the Board."

16 Sec. 2. G.S. 143-469(b) reads as rewritten:

- 17 "(b) A civil penalty of not more than two thousand dollars (\$2,000) may be
18 assessed by the Board against any person who:
- 19 (1) Sells or offers for sale any unregistered pesticide in violation of
20 G.S. 143-442;
- 21 (2) Uses a pesticide in a manner inconsistent with its labeling;
- 22 (3) Stores or disposes of a pesticide or pesticide container by means
23 other than means prescribed on the labeling or regulations adopted
24 pursuant to this Article;
- 25 (4) Makes false or fraudulent claims about the effect of any pesticide
26 or method of application of a pesticide;
- 27 (5) Violates any stop sale, stop use, or removal order adopted under
28 G.S. 143-447;
- 29 (6) Fails to provide names and addresses of recipients of pesticides
30 which are the subject of stop sale, stop use, or removal orders
31 when the person is the registrant of the pesticide or has sold or
32 distributed the pesticide;
- 33 (7) Fails to make and keep records required by this Article, fails to
34 make reports when required by this Article or refuses to make
35 such records and reports available for audit or inspection by the
36 Board or its agents;
- 37 (8) Falsifies all or part of any application for the registration of a
38 pesticide or the issuance or renewal of any license under this
39 Article;
- 40 (9) Makes false statements or provides false information in connection
41 with any investigation conducted under this Article;
- 42 (10) Operates as a pesticide applicator, consultant or dealer without a
43 license;

1 (11) Makes any restricted use pesticide available for use by any person
2 other than a certified private applicator, licensed pesticide
3 applicator, certified structural pest control applicator, or structural
4 pest control licensee or an employee working under the direct
5 supervision of such applicator or licensee.

6 (12) Distributes, sells or offers for sale any restricted use pesticide to
7 any dealer who does not hold a valid North Carolina Pesticide
8 Dealer License.

9 In determining the amount of any penalty, the Board may consider the degree and
10 extent of harm caused by the violation and the cost of rectifying the damage caused
11 by the violation. In cases where a violation occurs solely due to pesticide damage to
12 vegetation in a nontarget area, the amount of a civil penalty may not exceed the
13 reasonable value of the damaged vegetation, unless the applicator has had a violation
14 within the past three years."

15 Sec. 3. This act shall become effective October 1, 1995 and applies to
16 violations occurring on or after that date.

EXPLANATION OF LEGISLATIVE PROPOSAL III

Legislative Proposal III would make two changes to the North Carolina Pesticide Law, Article 52, Chapter 143 of the General Statutes.

Section 1 of the bill amends G.S. 143-443(b) by adding a new subdivision (6) making it unlawful for a property owner to contract with an aerial applicator to apply pesticides in restricted areas.

Section 2 of the bill amends G.S. 143-469(b) by adding a limitation to the civil penalty authority of the Pesticide Board. In cases where the only damage from the improper application of pesticides is to vegetation in a nontarget area, and the applicator has not had a prior violation of the pesticide laws in the past three years, the civil penalty assessed may not exceed the value of the vegetation damaged.

The act becomes effective upon ratification and applies to violations occurring on or after that date.



LEGISLATIVE PROPOSAL IV
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

S/H

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95-RFZ-004
THIS IS A DRAFT 24-JAN-95 08:23:44

Short Title: Penalties/Viol. of Ag. Laws.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CIVIL PENALTIES FOR VIOLATIONS OF THE
3 GASOLINE AND OIL INSPECTION LAW, THE MEAT INSPECTION LAW,
4 AND THE ANIMAL WELFARE AND ANIMAL HEALTH LAWS.
5 The General Assembly of North Carolina enacts:
6 **PART I. GASOLINE AND OIL INSPECTION ACT.**
7 Section 1. Article 3 of Chapter 119 of the North Carolina General
8 Statutes is amended by adding the following new section:
9 "**§ 119-39.1. Civil Penalties.**
10 The Commissioner of Agriculture may assess a civil penalty of not more than five
11 thousand dollars (\$5,000) against any person who violates a provision of this Article
12 or any rule promulgated thereunder. In determining the amount of the penalty, the
13 Commissioner shall consider the degree and extent of harm caused by the violation."
14 **PART II. MEAT INSPECTION LAWS.**
15 Sec. 2. G.S. 106-549.35 is amended by adding the following new
16 subsection:
17 "**(c) The Director of the Meat and Poultry Inspection Service may assess a civil**
18 **penalty of not more than five thousand dollars (\$5,000) against any person who**
19 **violates a provision of this Article or Article 49B, or any rule promulgated**
20 **thereunder. In determining the amount of the penalty, the Director shall consider the**
21 **degree and extent of harm caused by the violation."**
22 **PART III. ANIMAL WELFARE ACT.**

1 promulgated thereunder. In determining the amount of the penalty, the State
2 Veterinarian shall consider the degree and extent of harm caused by the violation."

3 Sec. 9. Article 49 of Chapter 106 of the North Carolina General Statutes,
4 Poultry, Hatcheries and Chick Dealers, is amended by adding the following new
5 section:

6 "**§ 106-549.1. Civil Penalties.**

7 The State Veterinarian may assess a civil penalty of not more than five thousand
8 dollars (\$5,000) against any person who violates a provision of this Article or any rule
9 promulgated thereunder. In determining the amount of the penalty, the State
10 Veterinarian shall consider the degree and extent of harm caused by the violation."

11 Sec. 10. Article 49E of Chapter 106 of the North Carolina General
12 Statutes, Disposal of Dead Diseased Poultry, is amended by adding the following new
13 section:

14 "**§ 106-549.72. Civil Penalties.**

15 The State Veterinarian may assess a civil penalty of not more than five thousand
16 dollars (\$5,000) against any person who violates a provision of this Article or any rule
17 promulgated thereunder. In determining the amount of the penalty, the State
18 Veterinarian shall consider the degree and extent of harm caused by the violation."

19 Sec. 11. Article 49F of Chapter 106 of the North Carolina General
20 Statutes, Biological Residues, is amended by adding the following new section:

21 "**§ 106-549.89. Civil Penalties.**

22 The State Veterinarian may assess a civil penalty of not more than five thousand
23 dollars (\$5,000) against any person who violates a provision of this Article or any rule
24 promulgated thereunder. In determining the amount of the penalty, the State
25 Veterinarian shall consider the degree and extent of harm caused by the violation."

26 Sec. 12. Article 58 of Chapter 106 of the North Carolina General
27 Statutes, Biologics Laws, is amended by adding the following new section:

28 "**§ 106-715. Civil Penalties.**

29 The State Veterinarian may assess a civil penalty of not more than five thousand
30 dollars (\$5,000) against any person who violates a provision of this Article or any rule
31 promulgated thereunder. In determining the amount of the penalty, the State
32 Veterinarian shall consider the degree and extent of harm caused by the violation."

33 Sec. 13. The organizational headings to the parts of this act, set forth in
34 bolded upper case, are a convenience to the reader and are for reference only. The
35 headings do not expand, limit, or define the text of this act.

36 Sec. 14. This act is effective upon ratification and shall apply to
37 violations occurring on or after that date.

EXPLANATION OF LEGISLATIVE PROPOSAL IV

Legislative Proposal IV would provide civil penalty authority to the Department of Agriculture in a number of programs it administers. Currently in these programs, the only remedy available to the Department to redress problems is to seek criminal sanctions or in some cases to suspend or revoke a license.

Part I of the bill would provide the Commissioner of Agriculture the authority to assess a penalty of up to \$5,000 against a person violating the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

Part II of the bill would add a new subsection to G.S. 106-549.35 giving the Director of the Meat and Poultry Inspection Service the authority to assess a civil penalty of not more than \$5,000 for violation of the Meat Inspection Law, Article 49B, Chapter 106 of the General Statutes.

Part III of the bill would provide the State Veterinarian the authority to assess a civil penalty of up to \$5,000 for violations of the Animal Welfare Act, Article 3, Chapter 19A of the General Statutes.

Part IV of the bill would provide civil penalty authority to the State Veterinarian to assess a penalty of up to \$5,000 for violation of various animal health provisions in Chapter 106 of the General Statutes.

In all cases in which the civil penalty authority is extended in the bill, the person exercising the authority is to consider the degree and extent of harm caused by the violation in assessing the penalty.

The act is effective upon ratification and applies to violations occurring on or after that date.

- 1 (3) Net weight.
 2 (4) Origin, if known. If the origin is unknown, the fact shall be stated.
 3 (5) Percentage by weight of inert matter.
 4 (6) Percentage by weight of agricultural seeds and/or vegetable seeds
 5 (which shall be designated as 'other crop seeds') other than those
 6 named on the label. Different varieties of the same kind of seed,
 7 when in quantities of less than five percent (5%) will be
 8 considered as other crop seed.
 9 (7) Percentage by weight of all weed seeds, including noxious-weed
 10 seeds.
 11 (8) For each named agricultural seed:
 12 a. Percentage of germination, exclusive of hard seed.
 13 b. Percentage of hard seeds, if present.
 14 c. The calendar month and year the test was completed to
 15 determine such percentages.
 16 In addition to the individual percentage statement of germination
 17 and hard seed, the total percentage of germination and hard seed
 18 may be stated as such, if desired.
 19 (9) The name and number per pound of each kind of restricted
 20 noxious-weed seed present.
 21 (10) Name and address of person who labeled said seed or who sells,
 22 offers or exposes said seed for sale within this State. If the seeds
 23 are labeled by the shipper for a consignee within this State, the
 24 shipper may use his approved code designation with the name and
 25 address of the consignee.
 26 (11) Such other information as the Board shall prescribe by rule."
 27 Sec. 2. G.S. 106-277.6 is amended by adding the following new
 28 subdivision:
 29 "(6) Such other information as the Board shall prescribe by rule."
 30 Sec. 3. G.S. 106-277.7 is amended by adding the following new
 31 subdivision:
 32 "(8) Such other information as the Board shall prescribe by rule."
 33 Sec. 4. G.S. 106-277.15 reads as rewritten:
 34 "**106-277.15. Rules, regulations and standards.**
 35 ~~The Commissioner of Agriculture, jointly with the~~ Board of Agriculture, in
 36 accordance with the Administrative Procedure Act, after public hearing immediately
 37 ~~following 10 days' public notice~~ may adopt such rules, regulations and standards
 38 which they may find to be advisable or necessary to carry out and enforce the
 39 purposes and provisions of this Article, which shall have the force and effect of law.
 40 ~~The Commissioner and~~ Board of Agriculture shall adopt rules, regulations and
 41 standards as follows:
 42 (1) Prescribing the methods of sampling, inspecting, analyzing, testing
 43 and examining agricultural and vegetable seed, and determining
 44 the tolerance to be followed in the administration of this Article.

- 1 (2) Declaring a list of prohibited and restricted noxious weeds,
- 2 conforming with the definitions stated in this Article, and to add to
- 3 or subtract therefrom, from time to time, after a public hearing
- 4 following due public notice.
- 5 (3) Declaring the maximum percentage of total weed seed content
- 6 permitted in agricultural seed.
- 7 (4) Declaring the maximum number of 'restricted' noxious-weed seeds
- 8 per pound of agricultural seed permitted to be sold, offered or
- 9 exposed for sale.
- 10 (5) Declaring the minimum percentage of germination permitted for
- 11 sale as 'Agricultural Seeds.'
- 12 (6) Declaring germination standards for vegetable seeds.
- 13 (7) Prescribing the form and use of tags or stamps to be used in
- 14 labeling seed.
- 15 (8) Prescribing such other rules and regulations as may be necessary to
- 16 secure the efficient enforcement of this Article.
- 17 (9) Establishing fees and charges for agricultural and vegetable seed
- 18 testing and analysis.
- 19 (10) Prescribing minimum hybrid percentage for labeling for each
- 20 species hybridized.
- 21 (11) Prescribing labeling and coloring requirements for treated seed.
- 22 (12) Establishing a Tobacco Seed Committee which shall approve flue-
- 23 cured tobacco varieties prior to registration with the Department.
- 24 (13) Prescribing labeling requirements for agricultural and vegetable
- 25 seed."

26 Sec. 5. G.S. 106-277.28 reads as rewritten:

27 "§ 106-277.28. License and inspection fees.

28 For the purpose of providing a fund to defray the expense of inspection,

29 examination, and analysis of seeds and the enforcement of this Article:

- 30 (2) Each seed dealer who offers for sale any agricultural, vegetable, or
- 31 lawn or turf seeds for seeding purposes shall register with the
- 32 Commissioner and shall obtain an annual license, for each location
- 33 where activities are conducted, by January 1 of each year and shall
- 34 pay the following license fee:
- 35 a. Wholesale or combined wholesale and retail
- 36 seed dealer \$100.00
- 37 b. Retail seed dealer with sales of no
- 38 more than \$500.00..... 5.00
- 39 c. Retail seed dealer with sales of more
- 40 than \$500.00 but no more than \$1,000 15.00
- 41 d. Retail seed dealer with sales of more
- 42 than \$1,000 25.00.
- 43 (3) Each seed dealer or grower who has seed, whether originated or
- 44 labeled by the dealer or grower, that is offered for sale in this State

1 shall report the quantity of seed sold or offered for sale and pay an
2 inspection fee of two cents (2¢) for each container of seeds
3 weighing 10 pounds or more. This fee does not apply to seed
4 grown by a farmer and offered for sale by the farmer at the farm
5 where the seed was grown.

6 Each seed dealer or grower shall keep accurate records of
7 the quantity of seeds and container weights sold or offered for sale
8 from each distribution point in the State. These records shall be
9 available to the Commissioner or an authorized representative of
10 the Commissioner at any and all reasonable hours for the purpose
11 of verifying the quantity of seed sold and the fees paid. Each seed
12 dealer or grower shall report quarterly on forms furnished by the
13 Commissioner the quantity and container weight of seeds sold or
14 offered for sale. The reports shall be made on the first day of
15 January, April, July, and October, or within 10 days thereafter, and
16 the inspection fee shall be due and payable with the report. If the
17 report is not filed and the inspection fee paid to the Department of
18 Agriculture by the tenth day following the date due, or if the
19 report of the quantity or container weights is false, the
20 Commissioner may issue a stop-sale order for all seed offered for
21 sale by the dealer or grower. If the inspection fee is unpaid more
22 than 15 days after the due date, the amount due shall bear a
23 penalty of ten percent (10%) which shall be added to the
24 inspection fee due."

25 Sec. 6. This act is effective upon ratification.

EXPLANATION OF LEGISLATIVE PROPOSAL V

Legislative Proposal V amends the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes.

Section 1 amends G.S. 106-277.5 and provides that the Board of Agriculture may require agricultural seed labels state the variety of seed. When a variety is required to be stated, the phrase "variety not stated" may not be used. Section 1 further amends G.S. 106-277.5 to provide that agricultural seed labels also must contain other information as prescribed by the Board by rule.

Sections 2 and 3 of the bill amend G.S. 106-277.6 and G.S. 106-277.7 to allow the Board to require additional information on the labels of containers of vegetable seeds.

Section 4 amends G.S. 106-277.15 specifying that the Board of Agriculture shall adopt rules to implement the provisions of the Seed Law and provides authority to adopt rules prescribing labeling requirements. Under the existing law, the authority to promulgate rules rests with both the Commissioner and the Board. Section 4 further amends G.S. 106-277.15 to provide that the Board may adopt rules prescribing the labeling requirements for agricultural and vegetable seeds.

Section 5 of the bill amends G.S. 106-277.28 which provides for fees to defray the expenses of implementing the provisions of the Seed Law. The law now provides that the seed dealer or grower report and pay a fee on the quantity of seed sold. As amended, reports and fees will be required of seed sold or offered for sale. The fee of 2 cents per container of 10 lbs. or more remains the same.

The act is effective upon ratification.

LEGISLATIVE PROPOSAL VI
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

S/H

D

95-RFZX-006
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Short Title: Lic.of Poultry & Ratite Dealers.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR LICENSING OF DEALERS IN POULTRY AND
3 RATITES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 106-540(3) reads as rewritten:
6 "(3) Regulate hatching egg dealers, chick dealers, poult dealers, poultry dealers,
7 ratite dealers, and jobbers."
8 Sec. 2. G.S. 106-541 reads as rewritten:
9 "**§ 106-541. Definitions.** For the purpose of this Article, a hatchery shall be defined as
10 any establishment that operates hatchery equipment for the production of baby
11 chicks or poults. A hatching egg dealer, chick dealer or jobber shall mean any
12 person, firm or corporation that buys hatching eggs, baby chicks or turkey poults and
13 sells or offers them for sale. The term 'mixed chicks' or 'assorted chicks' shall mean
14 chicks produced from eggs from purebred females of a distinct breed mated to a
15 purebred male of a distinct breed. As used in this Article, 'poultry' means live
16 chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants,
17 pigeons, quail, swans or turkeys other than chicks or poults. As used in this Article,
18 'ratite' has the same meaning as in G.S. 106-549.15(21a). As used in this Article,
19 'live poultry or ratite dealer' means a person who sells or offers for sale to the
20 general public live poultry or ratites. This does not include persons who sell, on their
21 own premises, live poultry or ratites which were raised on the same premises."

1 Sec. 3. G.S. 106-542 is amended by adding the following new
2 subsections:

3 "(b1) It shall be unlawful for any person, firm or corporation to operate as a live
4 poultry or ratite dealer without first obtaining a license from the Department of
5 Agriculture for a fee of twenty-five dollars (\$25.00) per year.

6 "(b2) It shall be unlawful for a 'specialty market operator', as defined in G.S. 105-
7 53, to knowingly and willfully permit an unlicensed poultry or ratite dealer to operate
8 on the premises of the market more than 10 days after being notified in writing by
9 the Department of Agriculture."

10 Sec. 4. G.S. 106-547 reads as rewritten:

11 "**§ 106-547. Records to be kept.**

12 Every hatchery, hatching egg dealer, chick dealer, poultry dealer, ratite dealer or
13 jobber shall keep such records of operation as the regulations of the Department of
14 Agriculture may require for the proper inspection of said hatchery, dealer or jobber."

15 Sec. 5. This act is effective upon ratification; provided, however, that no
16 license required by this act shall be required before January 1, 1996.

EXPLANATION OF LEGISLATIVE PROPOSAL VI

Legislative Proposal VI amends Article 49 of Chapter 106 by expanding the licensing requirements of that Article to include poultry and ratite dealers. The existing law requires licensing only of hatcheries, chick and poult dealers.

The bill requires poultry and ratite dealers to obtain a license from the Department of Agriculture for a fee of \$25 per year and to make such reports as the Department may require for proper inspections. The bill makes it unlawful for specialty market operators (flea markets, etc.) to allow sales of poultry by unlicensed dealers after notification by the Department.

The bill becomes effective upon ratification, however, licenses will not be required before January 1, 1996.



APPENDIX A

§ 120-150. Creation; appointment of members.

There is created an Agriculture, Forestry, and Seafood Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture, forestry, and seafood sectors of the State's economy. Members shall be as follows:

- (1) Three appointed by the Governor;
- (2) Three appointed by the President of the Senate;
- (3) Three appointed by the Speaker of the House;
- (4) The chairman of the House Agriculture Committee;
- (5) The chairman of the Senate Agriculture Committee;
- (6) The Commissioner of Agriculture or his designee;
- (7) A member of the Board of Agriculture designated by the chairman of the Board of Agriculture;
- (8) The President of the North Carolina Farm Bureau Federation, Inc., or his designee;
- (9) The Master of the North Carolina State Grange or his designee; and
- (10) The Secretary of the Department of Environment, Health, and Natural Resources.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. The cochairmen of the Commission shall be the chairmen of the Senate and House Agriculture Committees respectively. (1985, c. 792, s. 20.1; 1989, c. 727, s. 218(81).)

§ 120-151. Advisory Committee.

Upon proper motion and by a vote of a majority of the members present, the Commission may appoint an Advisory Committee. Members of the Advisory Committee should be from the various organizations, commodity groups, associations, and councils representing agriculture, forestry, and seafood. The purpose of the Advisory Committee shall be to render technical advice and assistance to the Commission. The Advisory Committee shall consist of no more than 20 members plus a chairman who shall be appointed by the cochairmen of the Commission. (1985, c. 792, s. 20.1.)

§ 120-152. Subsistence and travel expenses.

The members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Members who are officials or employees of the State of North Carolina shall receive subsistence and travel allowances at the rate set forth in G.S. 138-6. All other members plus the Chairman of the Advisory Committee shall be paid the per diem allowances at the rates set forth in G.S. 138-5. Other members of the Advisory

Committee shall serve on a voluntary basis and not receive subsistence and travel expenses. (1985, c. 792, s. 20.1.)

§ 120-153. Facilities and staff.

The Commission may hold its meetings in the State Legislative Building with the approval of the Legislative Services Commission. The Legislative Services Commission shall provide necessary professional and clerical assistance to the Commission. (1985, c. 792, s. 20.1.)

§ 120-154. Duties.

The Commission shall bring to the attention of the General Assembly the influence of agriculture, forestry, and seafood on the economy of the State, develop alternatives for increasing the public awareness of agriculture, forestry, and seafood, study the present status of agriculture, forestry, and seafood, identify problems limiting future growth and development of the industry, develop an awareness of the importance of science and technological development to the future of agriculture, forestry, and seafood industries, and formulate plans for new State initiatives and support for agriculture, forestry, and seafood and for the expansion of opportunities in these sectors.

In conducting its study the Commission may hold public hearings and meetings across the State.

The Commission shall report to the General Assembly at least one month prior to the first regular session of each General Assembly.

APPENDIX B

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- (23) Recycling and Composting Poultry Mortalities (H.B. 421 - James).
- (41) Farmland Preservation Enabling Act, including Dairy Farmer Economic Issues (H.J.R. 1060 - Colton).
- (84) Development of Markets for Animal Residues (S.B. 956 - Albertson).

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XI.-----APPROPRIATION FOR STUDIES

Sec. 11.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by this act.

PART XII.-----EFFECTIVE DATE

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

APPENDIX C

AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION MEMBERSHIP 1993 - 1994

Senate Agriculture Committee Chair

Sen. Charles W. Albertson
136 Henry Dunn Pickett Road
Beulaville, NC 28518
(910)298-4223

Lt. Governor's Appointments

Sen. Elaine Marshall
P.O. Box 1660
Lillington, NC 27546
(910)893-4000

Mr. Prince Earl Smith
P.O. Box 18
6222 Burlington Road
Sandalia, NC 27342
(919)449-4981

Sen. James Speed
Rt. 6, Box 542
Louisburg, NC 27549
(919)853-2167

Governor's Appointments

Mr. David L. Burns
1204 Shepherd Avenue
Laurinburg, NC 28352
(919)462-2122

Mr. Robert Eric "Rick" Harrell
408 Confederate Lane
Windsor, NC 27983
(919)348-4326

Ex Officio

Mr. David McLeod
Dept. of Agriculture
1 West Edenton Street
Raleigh, NC 27601-1200
(919)733-7125

House Agriculture Committee Chair

Rep. Vernon G. James, Cochair
1301 Salem Church Road
Elizabeth City, NC 27909
(919)330-4394

Speaker's Appointments

Rep. Edith L. Lutz
1015 Carpenter's Grove Road
Lawndale, NC 28090
(704)538-7818

Rep. Josephus L. Mavretic
Route 4, Box 262
Tarboro, NC 27886
(919)823-2001

Rep. William L. Wainwright
P.O. Box 33
Havelock, NC 28532
(919)447-7379

Mr. C. Osmond "Ossie" Kearney, Jr.
Route 3, Box 157
Snow Hill, NC 28580
(919)747-5054

Mr. John Cyrus
(N.C. State Grange)
3300 Woodward Place
Raleigh, NC 27607
(919)782-6840

Mr. Sam McLawhorn
(Board of Agriculture)
Rt. 1, Box 74
Grifton, NC 28530
(919)524-5218

Mr. Julian Philpott
N.C. Farm Bureau Federation
P.O. Box 27766
Raleigh, NC 27611
(919)782-1705

Mr. Stan Adams
Dept. Environment, Health
and Natural Resources
512 N. Salisbury Street
Raleigh, NC 27604-1148
(919)733-4984

Mr. Robert W. Slocum, Jr.
Executive Vice President
N.C. Forestry Association
Suite 1
1600 Glenwood Avenue
Raleigh, NC 27608
(919)834-3943

Staff:
Ms. Barbara Riley
Research Division
(919)733-2578

Clerk:
Ms. Marie Sheets
611 Legislative Office Building
O: (919)733-5878
H: (919)851-5267